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ABSTRACT

This document discusses the proposed "Rights and Responsibilities of Test Takers" from the perspective of a large employer using employment testing to predict future performance in a variety of jobs. It is suggested that the proposed document will impede an employer's ability to use tests for selection purposes in three ways. The existence of the document will raise doubts about the utility of employment testing and cause industrial and organizational psychologists to spend more time defending what they do than they spend doing it. A second concern is that of legal defensibility and violations of professional standards. A third is that the requirements of the proposed document are so onerous that many employers will not be able to meet the requirements even if they wanted to. Specific criticism of the document begin with the use of the word "Rights," and the complications that it causes employers. In addition, the tone of the document implies a profession in need of policing. Another concern is the potential for conflicts with existing federal, state, and local laws if certain groups receive special consideration as a "right." This concern extends to the definition of what all the rights really are. "Rights" that require appropriately trained test administrators, scorers, and interpreters open a number of problems with regard to training. "Rights" that require test takers to receive scores promptly or in particular terms cause other problems of definition. Along with all the other opportunities for controversy that the "rights" may cause, they are primarily designed for paper and pencil tests, and leave out alternative testing methods. Rather than being regarded as a document of rights, the proposed "Rights and Responsibilities" should be a guideline for interacting with test takers. (Contains one table.) (SLD)

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The Rights and Responsibilities of Test Takers from an Employer's Perspective

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The Rights and Responsibilities of Test Takers from an Employer's Perspective

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Good Afternoon. I would like to discuss the Rights and Responsibilities of Test Takers from the perspective of a large employer that uses tests of many different kinds to select employees for employment, transfer, and promotion.

Employment testing has been used successfully in many companies to predict future performance in a wide array of jobs. Although many companies have found employment testing useful in developing a capable work force, one of the unfortunate aspects of employment testing is its litigious nature. While those of us who work in this area believe strongly that standardizing testing is a fair and objective way to decide who may go to the next step in the hiring process, others do not share our beliefs.

I fear that the proposed Rights and Responsibilities of Test Takers will impede an employer's ability to use tests for selection purposes in three ways. First, the Rights and Responsibilities of Test Takers will raise doubts about the utility of employment testing. Concerns from other employees means industrial and organizational psychologists must spend more time defending what they do than doing it. Rather than developing and validating effective selection tools, they must explain why the resulting instruments are fair, valid, and non-discriminatory. Concerns from the external applicant pool may mean that an employer cannot attract qualified candidates.

A second but closely related concern is the issue of legal defensibility. A document like the Rights and Responsibilities of Test Takers that is sanctioned by professional organizations and spells out obligations of the test user (in this case the employer) certainly implies a "best practice." Thus, any test user or employer who fails to meet a responsibility has, in effect, violated a professional standard. It would be difficult, if not impossible, to explain in a court of law why a test user who happens to also be an employer is not bound to meet these expectations. A number of people have suggested to me that documents such as the Rights and Responsibilities of Test Takers do not have the weight of law. However, I remind you that the Standards for Educational and Psychological Testing and the Principles for the Validation and Use of Personnel Selection Procedures are not law either, but are frequently cited in court cases.

Third, the requirements of the Rights and Responsibilities of Test Takers are so onerous in many employment contexts that an employer will not be able to meet the requirements – even if it wanted to do so. Often, employers administer tests in the locations where the employment opportunities are. For a national company, this could mean several hundred test sites. Many run continual hiring programs that respond to

business needs as quickly as possible. In some locations testing occurs every day; in others, testing is conducted as infrequently as once every month or so. In even the largest companies with the deepest pockets, the requirements of the Rights and Responsibilities of Test Takers document could not be implemented in every location where a test is given.

Interestingly, all three of these concerns fade into one another. Legal questions about correct procedures encourage questions about basic fairness and appropriateness of the testing program. Enlarging the number of aspects of testing that can be called into question also increases the costs of testing and the feasibility of implementing large scale testing programs for employment. The end result may be that employment testing is just not worth the extraordinary effort that will be required.

I'd like to spend the next few minutes sharing my Top Ten Rights and Responsibilities of Test Takers Worry List with you and providing specific examples of the problems that may arise.

1) Let me begin with the title: Rights and Responsibilities of Test Takers. When we talk about "rights," we generally think of legal entitlements, protections, and remedies. Although it is not clear who or what the enforcement agent would be, I have no doubt that a plaintiff's attorney would take the opportunity to point out to an employer all the deficiencies of a testing program and the professionally sanctioned "rights" that have been denied a test taker. Nor do I know what the specific legal remedies are when a right has been denied. What seems obvious to me is that if a right is denied in some way, the burden shifts to the employer to prove that there is some special reason why the right should not have been protected. The employer now becomes guilty until it proves itself innocent.

2) The tone of the document certainly implies a profession in need of policing. Right 2 states that a candidate has the right to:

Be treated with courtesy, respect, and impartiality, regardless of your race, gender, age, disability, religion, ethnicity, national origin, and sexual orientation.

I am not naive enough to believe that every applicant has been treated fairly and without regard to his or her race, gender, age, disability, religion, ethnicity, national origin, and sexual orientation. Sadly, there is too much evidence to the contrary. I am cynical enough to believe that behavior that connotes partiality happens infrequently if for no other reason than it is against the federal EEO laws (Civil Rights Act of 1964) and there are numerous parties willing to support a lawsuit if such an event did occur. I am also old enough to believe that courtesy and respect, like morals, cannot be legislated.

Statements like Right 2 serve to increase the doubts many lay people have about testing in general and employment testing in particular. By stating a fundamental

expectation of everyone involved in testing, we seem to be reminding the doubters of past failures. Do we really need to state the obvious? Should we assume the worst about our profession?

3) Another legal concern involves apparent conflicts with existing federal, state, and local laws. For example, the Right 8a states:

You are entitled to have your test scores interpreted in light of additional considerations (e.g., disability, language proficiency) if they are relevant to understanding your performance.

Of course, the concern here is that this Right suggests that employers should use different norms, non-standard testing conditions, or separate prediction equations for those who differ in some way. There are numerous situations in employment testing in which language proficiency might explain a test score. However, assuming that a requirement of the job for which the candidate is being tested is proficiency in English, using information about a candidate's proficiency in English to modify a test score would result in inconsistent treatment across candidates.

Imagine a customer service representative position that requires the ability to converse in business English and read company documents that are written in business English. A company develops a paper and pencil cognitive battery that contains a reading test. Does it make sense to take into account a candidate's lack of knowledge of the English language? Reading in English is clearly a requirement of the job. To treat those whose first language is not English differently would result in disparate treatment that has the potential to harm those whose first language is English.

4) For those of us who have legal worries, we must understand exactly what these rights require us to do. Phrases like "additional considerations," "interpreted," and "relevant to understanding your performance" are ambiguous and can be interpreted in several ways. What are "additional considerations?" Are race and sex "additional considerations?" Does "interpreted" mean separate norms? score adjustments? When we talk about "relevant to understanding your performance," do we mean performance on the test? performance on the job? Think what an adversary could do with those words!

Here are some others.

Right 6 states:

Have your test administered and your test results interpreted by appropriately trained individuals.

What is "appropriately trained?" If the current work on Test User Qualifications is any indication, we have not yet agreed upon what is "appropriately trained."

Right 6c states:

You should be able to obtain reasonable information about whether those involved in your testing, such as selecting the measure, administering it, scoring it, and interpreting it, are qualified to do so.

If we use an internally developed test administrator training program, do we provide the training program to test takers so they can review it and determine if it meets their standards?

Right 8 promises prompt feedback:

Have test results explained promptly after taking the test and in commonly understood terms.

Who defines "promptly?" Can promptly be situationally specific? If I provide same day feedback for the three candidates for one secretarial position, do I have to do the same thing for 5,000 candidates for 100 positions in an oil refinery? Here's another case where the legal concerns melt into feasibility concerns and candidate attitude issues.

5) Regardless of whether this document is considered a legal document or a professional document simply outlining the expectations of the profession, the contradictions must be cleaned up. We must be clear about what we mean. Here's an example:

Right 4: Be informed prior to testing about the test's purposes, the nature of the test, whether test results will be reported to you, the planned use of the results, when not in conflict with the testing purposes.

Right 5: Know in advance when the test will be administered, when test results will be available, and whether there is a fee for testing services that you are expected to pay.

Right 8: Have test results explained promptly after taking the test and in commonly understood terms.

I'm confused. Do my test takers get to know if they will get test results, when they will get test results, or how they will get test results?

6) Nowhere in the Rights and Responsibilities of Test Takers document have we explained what a test is. In contrast, the Uniform Guidelines take a broad perspective on what a test is.

These guidelines apply to tests and other selection procedures which are used as a basis for any employment decision. Employment decisions include but are not limited to hiring, promotion, demotion, membership (for example, in a labor organization), referral, retention, and licensing and certification, to the extent that licensing and certification may be covered under the Federal equal employment opportunity law. Other selection decisions, such as selection for training or transfer, may also be considered employment decisions if they lead to any of the decisions listed above. Uniform Guidelines on Employee Selection Procedures, Section 2b.

Those of us who work in employment settings must use the broad definition of testing. Thus, a test could be a paper and pencil test that is cognitive or non-cognitive in nature. A test could also be a structured interview that measures knowledge, skills, or abilities. A test might be a work simulation with a behavioral checklist that is used for promotion or a knowledge test used for certification. A test could be a performance appraisal instrument that contributes to a promotion decision or a 360 Degree Feedback instrument that determines training opportunities or promotion. We occasionally see accomplishment records used for de-selection. In other words, there are a myriad of management decisions that are based on instruments that can be construed to be a "test" or "employee selection procedure."

Many of the Rights and Responsibilities of Test Takers are just not applicable to any kind of test other than paper and pencil tests. Look at Right 4b:

You are entitled to know before taking any test the planned uses of the test results and under what conditions and for how long the scores are stored.

Participatory performance appraisals are common in industry today so I suppose a person can technically "take" a performance appraisal. I'm not sure a company could specify *a priori* to what uses the results of a performance appraisal might be put. Does the Rights and Responsibilities of Test Takers document intend to prevent companies from using performance appraisals unless all the rights were covered? Could it? In contrast to more traditional forms of paper and pencil testing, the use of some form of performance appraisal is more common and affects many more businesses. Will the Rights and Responsibilities of Test Takers impede only those organizations foolish enough to hire someone like ourselves?

7) We must also ask ourselves if these Rights apply to all situations. The way the Rights and Responsibilities of Test Takers is written, the Rights apply to research studies and

validation research. Many of the Rights would be extremely difficult to implement in a validity study. Take Right 3, which states:

Be tested with measures that meet professional standards that are appropriate for you, given the manner in which the test results will be used.

If I am conducting a concurrent validity study, am I really obligated to find out what measures are appropriate for each participant? I am trying to define requirements of a job and identify instruments that adequately measure the required knowledge, skills, and abilities. In most validity studies, I fully expect some of the measures to be "inappropriate" for some of the participants. Some of the tests may well be too hard or too easy. That's one of the purposes of the validity study. An unintended (I hope) consequence of this document might be the elimination of our ability to conduct a validity study.

8) Another concern is the feasibility of providing the information required in the Rights and Responsibilities of Test Takers document to test takers. A number of us have tried to count the things that we will be obligated to provide. Here's my list of 45. (See Table 1.) (It seems that each of us comes up with a different number. I'm sure it depends on how you count the redundancies.) Is it realistic to get this information to candidates?

If I am running a selection program for a fast food restaurant chain where the average store turnover is 200%, does it make sense to spend several hours providing this kind of information?

9) Another feasibility question we must ask ourselves is what the test taker can comprehend. In Right 6c, we state that the test taker should get reasonable information about the people involved in testing:

You should be able to obtain reasonable information about whether those involved in your testing, such as selecting the measure, administering it, scoring it, and interpreting it, are qualified to do so.

If I provided resumes for all the people in my company who develop and validate tests; all those who administer them in over 100 different locations; all those who score them; all those who interpret them, etc., the candidate has a lot to read. (I suppose the good news is that if I use an off-the-shelf test, I don't have to provide information on the people who developed it.) But the issue isn't really the amount of material; the concern is what is a candidate going to do with the information once he or she has it.

Imagine a recent high school graduate applying for craft position in a large company and taking a battery of tests for the job. What is he or she going to do with the facts of my education or experience? How will he or she judge if the information is good or bad?

10) A final concern is the obligation an employer has to its applicant pool. Right 2b states that test takers should have the right to free materials or services (e.g., test preparatory programs):

If free materials or services (e.g., test preparatory programs) designed to enhance test performance are provided by publishers or institutions, you should have equal access to them without regard to any characteristics irrelevant to the purposes of testing.

In today's competitive labor market, many employers have discovered that keeping your good employees and training or re-training them is an effective way to maintain a qualified labor force. Many employers provide training and education opportunities to their employees as part of the benefits and compensation package. Many employers provide special training programs to their own employees that are not provided to the potential applicant pool. Some of these materials prepare individuals to take tests; others teach basic skills or specific knowledge areas. No materials are literally free. Right 2b reads as though an employer is obligated to provide these same services to all potential applicants. Many employers will not agree with us and will not welcome our requirement. For-profit employers must carefully choose how to spend their training dollars.

I hope no one here thinks my comments mean that I am unconcerned about problems in testing programs in industry. I know there are some unacceptable practices that occur in employment testing. I spend a great deal of time trying to prevent them from occurring in my own organization. My point today is that I do not believe that the Rights and Responsibilities of Test Takers in its current form will prevent these problems. Either the Rights and Responsibilities of Test Takers will be ignored at some peril to the organization, or, worse, business and industry will stop using tests as a method of selecting employees and rely on tools that are less valid, less reliable, unfair, and more expensive.

The Rights and Responsibilities of Test Takers is an excellent outline of issues that need to be understood and discussed by every test user. Taking into consideration scientific evidence, federal EEO laws, and the ethical principles of our profession, every test user ought to consider each right and decide what is the appropriate thing to do in a specific situation. Rather than a list of Test Taker Rights, the Rights and Responsibilities of Test Takers document needs to be positioned as a guideline for interacting with test takers and to emphasize that in many situations there is no one correct answer.

Table 1
Information Provided to the Test Taker

1. Rights and responsibilities as a test-taker (1)
2. Free materials or services (e g., test preparatory programs) (2b)
3. Test purpose (4)
4. Nature of the test (4)
5. Whether test results will be reported (4)
6. Planned use of the results (4)
7. Characteristics of the test (4a)
   - how much time to take test
   - what kinds of questions
8. Under what conditions the scores are stored (4b)
9. For how long the scores will be stored (4b)
10. Safeguards that prevent the possible misuse of your test scores (4c)
11. Optional or required materials that may be brought to the test site (4d)
12. Information on the accuracy and appropriateness of the test (4e)
13. How often, how soon, and under what conditions you make the test (4f)
14. Special scoring procedures that may affect your results (4g)
15. Whether you have access to copies of the tests (4h)
16. Whether you may obtain your answer sheets (4h)
17. Whether you may have your answer sheets re-scored (4h)
18. Whether you may cancel your test scores (4h)
19. Procedures regarding questions (4i and 4j)
20. Information regarding special equipment and opportunity to practice (4k)
21. Whether your test results will be flagged (4l)
22. Information regarding options you may have in testing (4m)
23. When the test will be administered (5)
24. When the test results will be available (5)
25. Whether there is a fee for testing services and what the fee for each component is (5 and 5a)
26. Schedule changes and explanation of reason for change (5a)
27. Information regarding the people who select, administer, score, and interpret your test (6c)
28. If test is optional (7)
29. Consequences of taking or not taking the test (7)
30. Consequences of failing to complete a test (7c)
31. Explanation of any deviation from the testing services to which you initially agreed (7d)
32. Prompt explanation of test results in commonly understood terms (8)
33. Explanation of test scores in light of additional considerations (8a)
34. Information regarding the characteristics of the comparison group (8b)
35. Extent to which the comparison group information is relevant to interpretation (8b)
36. Sources of information used in reaching an interpretation (8c)

37. Recommendations regarding how to improve performance (8d)
38. How to request a second opinion and the costs (8e)
39. Pass scores (8f)
40. How much your scores are likely to change on a re-take (8g)
41. Who will have access to your test results and in what form (9a)
42. Process for questioning results (10a)
43. Process for appealing decisions (10b)
44. Information regarding why test results are canceled or not released (10d)
45. Types of evidence and procedures used to make the decision (10d)